

United States District  
District of Massachusetts

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

Jennaya Bennett-Werra, aka  
James Bennett-Werra,  
Plaintiff,

V.

C.A.No. 20-10017-ADB

Steven Tompkins, Yolanda Smith,  
Zezinha Mitchell, Jennifer Sullivan,  
Christina Ruccio, and Naphcare,  
Defendants.

### Plaintiff's Motion to Amend Complaint

I Plaintiff Jennaya Bennett-Werra, acting as Pro Se, do so woefully ask this court to allow me to make Amendments to my complaint on the grounds of new relevant occurrences have taken place since the date of signing of my original complaint. I would also ask that this court take into consideration that I am working as pro se and have little experience with the courts, when considering this here motion.

In support of this here motion plaintiff, respectfully refers the court to the following contemporaneously filed documents. I would like to add the following documents to my original complaint.

(1) Causes of Action;

(2.) Suffolk County Sheriff's Department Inmate Disciplinary report for Bennett-Werra, James written by Officer Neville Depass and the Suffolk County Sheriff's Department Disciplinary Hearing Findings and Sanctions Form following Officer Neville Depass' Disciplinary report.

(3.) 2 Naphcare Medical Department Sick call request forms.

(4.) Factual Allegations

Jennaya Bennett-Werra  
Acting as Pro Se  
Jennaya Bennett-Werra

Dated:



## Causes of Action

### Count One

(ADA - Discrimination/Failure to Accommodate)

11. I incorporate by reference the preceding paragraphs of my complaint as though fully set forth herein.

12. Defendants violated the ADA, 42 U.S.C. § 12101, et seq., by discriminating against me on the basis of my disability. The discrimination includes:

- (a.) Refusing to house me on a women's unit at Suffolk County House of Corrections. Defendants have refused to do so knowing that I am a woman, I identify as a woman and experience great discomfort in living with men, and that I had been and would be subjected to humiliating, terrifying and dangerous circumstances.
- (b.) Refusing to reprimand staff who fail to appropriately accommodate, treat, and communicate with individuals with Gender Dysphoria. In turn allowing staff to continue to mistreat individuals with Gender Dysphoria.
- (c.) Refusing to inform all staff to use proper female pronouns when addressing or referring to me and/or refusing to reprimand staff who knowingly and blatantly use male pronouns when addressing or referring to me.
- (d.) Only allowing me to be housed in specific cells on any given unit such as cells 2 through 5, while knowing this placement subjects me to humiliating, fearful, circumstances do to the fact that male inmates and officers can see me while I use the bathroom.



(e.) Denying me access to electrolysis as is a necessary medical procedure in treating individuals with Gender Dysphoria.

13. Defendants violated the ADA by failing to provide me with the aforementioned reasonable accommodations.

14. None of my requested accommodations "would materially impair the safe and efficient operation of the program, present a safety hazard to the individual inmate or staff, threaten the security of the correctional institution/facility, or would otherwise cause undue hardship in the operation of the institution/facility." 103 Doc 207.01.

15. Nor would any of my requested accommodations "fundamentally alter the nature of [any] service, program, or activity." 28 C.F.R. § 35.130(b)(7).

16. Defendants' actions and failure to accommodate my attempts to alleviate the stresses caused by my Gender Dysphoria have caused me to suffer from depression, anxiety, and have impaired my ability to participate in basic life activities.

## Count TWO

(Rehabilitation Act - Discrimination / Failure to Accommodate)

17. I incorporate by reference the preceding paragraphs of my complaint as though fully set forth herein.

18. Defendants violated the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq. by discriminating against me on the basis of my disability.



19. Defendants' discriminatory actions and failure to accommodate my attempts to alleviate the stresses caused by my Gender Dysphoria have caused me to suffer from depression, anxiety, and have impaired my ability to participate in basic life activities. Defendants' acts in violation of the Rehabilitation Act include:

(a.) Refusing to house me on a women's unit at Suffolk County House of Correction. Defendants have refused to do so knowing that I am a woman, identify as a woman and experience great discomfort in living with men, and that I had been and would be subjected to humiliating, terrifying and dangerous circumstances.

(b.) Refusing to reprimand staff who fail to appropriately accommodate, treat, and communicate with individuals with Gender Dysphoria. In turn allowing staff to continue to mistreat individuals with Gender Dysphoria.

(c.) Refusing to inform all staff to use proper female pronouns when addressing or referring to me and/or refusing to reprimand staff who knowingly and blatantly use male pronouns when addressing or referring to me.

(d.) Only allowing me to be housed in specific cells on any given unit, such as cells 2 through 5, while knowing this placement subjects me to humiliating, fearful, circumstances due to the fact that male inmates and officers can see me while I use the bathroom.

(e.) Denying me access to electrolysis as is a necessary medical procedure in treating individuals with Gender Dysphoria.

20. Defendants' actions and failure to accommodate my attempts to alleviate the stresses caused by my Gender Dysphoria have caused me to suffer from depression, anxiety and have impaired my ability to participate in basic life activities.

### Count Three

(Fourteenth Amendment of the U.S. Constitution - Equal protection clause)

21. I incorporate by reference the preceding paragraphs of my Complaint as though fully set forth herein.

22. Defendants, acting under color of state law, have violated my rights under the Equal Protection clause of the 14th Amendment by impermissibly discriminating against me on the basis of my sex, gender identity, transgender status, and disability.

23. Defendants' actions and failure to accommodate my attempts to alleviate the stresses caused by my Gender Dysphoria have caused me to suffer from depression, anxiety and have impaired my ability to participate in basic life activities.

### Count Four

(Fourteenth Amendment of the U.S. Constitution - Due Process clause)



24. I incorporate by reference the preceding paragraphs of my complaint as though fully set forth herein.

25. The Due Process Clause of the Fourteenth Amendment prohibits State government from depriving individuals of their property or liberty interests without due process of law. The Due Process Clause of the Fourteenth Amendment requires, at a minimum, that government action have some rational basis. Defendants' placement of me on a male unit and disregard of the fact that I am a woman and have a female gender identity is irrational. Defendants' treatment of me also impermissibly burdens my fundamental rights to autonomy and privacy, including my right to live as a woman and consistent with my gender identity as set forth above. Defendants have violated the Due Process Clause of the Fourteenth Amendment.

26. Defendants' actions have caused me to suffer from depression, anxiety, and have impaired my ability to participate in basic life activities.

### Count Five

(Massachusetts Constitution - Pt. 1, Articles I and VII, among others)

27. I incorporate by reference the preceding paragraphs of my complaint as though fully set forth herein.

28. Defendants' actions have caused me to be placed in a men's unit. Defendants' disregard of the fact that I am a woman and have a female gender identity is in violation of my rights, including my Due Process Rights, Under the



Declaration of Rights, Articles I and VII, among others of the Massachusetts Constitution.

29. Defendants' actions have caused me to suffer from depression, anxiety, and have impaired my ability to participate in basic life activities.

### Count Six

(Massachusetts Constitution - Article 106)

30. I incorporate by reference the preceding paragraphs of my Complaint as though fully set forth herein.

31. Defendants violated Article 106 of the Massachusetts Constitution by discriminating against me on the basis of my transgender status, gender identity and my sex. Specific violations include:

(a.) Refusing to house me on a women's unit at Suffolk County House of Corrections. Defendants have refused to do so knowing that I am a woman, identify as a woman and experience great discomfort in living with men, and that I had been and would be subjected to humiliating, terrifying and dangerous circumstances.

(b.) Refusing to reprimand staff who fail to appropriately accommodate, treat, and communicate with individuals with Gender Dysphoria. In turn allowing staff to continue to mistreat individuals with Gender Dysphoria.

(c.) Refusing to inform all staff to use proper female



Pronouns when addressing or referring to me and/or refusing to reprimand Staff who knowingly and blatantly Use male pronouns when addressing or referring to me.

(d.) Only allowing me to be housed in specific cells on any given unit such as cells 2 through 5, while knowing this placement subjects me to humiliating, fearful circumstances do to the fact that male inmates and officers can see me while I use the bathroom.

(e.) Denying me access to electrolysis as is a necessary medical procedure in treating individuals with Gender Dysphoria.

32. Defendants' actions and failure to accommodate my attempts to alleviate the stresses caused by my Gender Dysphoria have caused me to suffer from depression, anxiety, and have impaired my ability to participate in basic life activities.

### Count Seven

(Massachusetts Constitution - Article 114)

33. I incorporate by reference the preceding paragraphs of my complaint as though fully set forth herein.

34. Defendants violated Article 114 of the Massachusetts Constitution by discriminating against me on the basis of my gender identity, disability, Gender Dysphoria. Specific violations include:



- (A.) Refusing the placement of me on a womens unit at Suffolk County House of Corrections. Defendants have refused to do so knowing that I am a women, identify as a women and experience great discomfort in living with men, and that I had been and would be subjected to humiliating, terrifying and dangerous circumstances.
- (b.) Refusing to reprimand staff who fail to appropriately, accommodate, treat, and communicate with individuals with Gender Dysphoria. Inturn allowing staff to continue to mistreat individuals with Gender Dysphoria.
- (C.) Refusing to inform all staff to use proper female pronouns when addressing or referring to me and/or refusing to reprimand staff who knowingly and blatantly use male pronouns when addressing or referring to me.
- (d.) Only allowing me to be housed in specific cells on any given unit such as cells 2 through 5, while knowing this placement subjects me to humiliating, fearful circumstances do to the fact that male inmates and officers can see me while I use the bathroom.
- (e.) Denying me access to electrolysis as is a necessary medical procedure in treating individuals with Gender Dysphoria.

35. Defendants' actions and failure to accommodate



my attempts to alleviate the stresses caused by my Gender Dysphoria have caused me to suffer from depression, anxiety, and have impaired my ability to participate in basic life activities.

### Count Eight (42 U.S.C. §1983 - Violation of Civil Rights)

36. I incorporate by reference the preceding paragraphs of my Complaint as though fully set forth herein.

37. Defendants are "Persons" under 42 U.S.C. §1983 who acted "under the color of state law" and deprived me of rights secured by the U.S. Constitution. Specific violations include:

(A.) Refusing to house me on a women's unit at Suffolk County House of Corrections. Defendants have refused to do so knowing that I am a woman, have a female gender identity, have undergone a gender transition, have lived on the outside as a woman and experience great discomfort in living with men, and that I had been and would be subjected to humiliating, terrifying and dangerous circumstances.

(B.) Refusing to reprimand staff who fail to appropriately accommodate, treat, and communicate with individuals with Gender Dysphoria. In turn allowing staff to continue to mistreat individuals with Gender Dysphoria.

(C.) Refusing to inform all staff to use proper female pronouns when addressing or referring to me and/or refusing to reprimand



Staff who knowingly and blatantly use male pronouns when addressing or referring to me.

(d.) Only allowing me to be housed in specific cells on any given unit such as cells 2 through 5, while knowing this placement subjects me to humiliating, fearful circumstances due to the fact that male inmates and officers can see me while I use the bathroom.

(e.) Denying me access to proper healthcare such as electrolysis as is a necessary medical procedure in treating individuals with Gender Dysphoria.

Defendants actions have caused me to suffer from depression, anxiety, and have impaired my ability to participate in basic life activities.

### Count Nine

(Prison Rape Elimination Act of 2000, 42 U.S.C. §15601, et Seq. and its implementing regulations, 28 C.F.R. Pt. 115)

38. I incorporate by reference the preceding paragraphs of my complaint as though fully set forth herein.

39. Defendants violated the Prison Rape Elimination Act of 2000, 42 U.S.C. §15601, et Seq. and its implementing regulations, 28 C.F.R. Pt. 115 by failing to prevent and detect circumstances in which I had been or would be victim of Sexual assault or Sexual harassment. Specific violations include:



- (a.) Refusing to house me on a women's unit at Suffolk County House of Corrections. Defendants have refused to do so knowing that I am a woman, I identify as a woman and experience great discomfort in living with men, and that I had been and would be subjected to sexual assault and/or harassment, humiliating, terrifying and dangerous circumstances.
- (b.) Defendants fail to use the PREA screening process in deciding whether to assign a transgender inmate to a male unit or female unit.
- (c.) Defendants fail to seriously consider my own views with respect to my own safety when deciding my housing placement, putting me at risk of sexual assault and/or harassment.
- (d.) Defendants fail to meet the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- (e.) Defendants fail to reassess my placement at least twice each year to review any threats of safety experienced by me.
- (f.) Defendants fail to seriously consider the fact that I have undergone transition to the female gender and have female body parts, when deciding my housing placement.

40. Defendants have violated Prison Rape Elimination Act of 2000, 42 U.S.C. §15601, et Seq. and its implementing Regulations, 28 C.F.R. Pt. 115 by failing to prevent and detect Circumstances in which I had been or would be victim of Sexual assault and/or Sexual harassment.

41. Defendants actions have caused me to suffer from depression, anxiety, and have impaired my ability to participate in basic life activities.

### Factual Allegations

42. Gender Dysphoria, as defined by the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM-V"), is a medical condition in which there is a marked incongruence between one's experienced or expressed gender and one's assigned sex at birth, lasting for at least 6 months and manifested through at least two of the following symptoms:

- a.) A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics.
- b.) A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender.
- c.) A strong desire for the primary and/or secondary sex



### Characteristics of the other gender.

d.) A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).

e.) A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).

f.) A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

43. A person with Gender Dysphoria experiences clinical distress from having a gender identity - an internalized sense of being male or female - that is different than his or her assigned sex and gender at birth.

44. Gender Dysphoria is associated with high levels of stigmatization, discrimination, and victimization. The isolation of and discrimination experienced by someone with Gender Dysphoria often leads to negative self-esteem, increased risk of mental disorders, and comorbidity, i.e., suffering from another disease or disorder.

45. Individuals suffering from Gender Dysphoria often experience severe psychological harm and suffering, including anxiety, depression, and/or thoughts of suicide.





46. Gender Dysphoria is, however, highly treatable.

47. Treatment protocol for Gender Dysphoria, as recommended by the American Psychological Association ("APA"), includes "Counseling, Cross-Sex hormones, gender reassignment surgery, and social and legal transition to the desired gender." Going through a "gender transition" or "transition" is the medical process of changing one's body from that typically associated with his or her assigned sex at birth (in my case - male) to that typically associated with the person's gender identification (in my case - female).

48. On 9-5-19 Christina Ruccio did in fact discriminate against me and did not treat me the same as all other women housed at Suffolk County H.O.C by relinishing me of my right to attend women's programming for a week and did not do the same to the other female inmate who did in fact hand me a letter to pass to a male inmate in which I was housed on the same unit with at the time. I did in fact write a grievance about this but my grievance was denied.

49. On 10/23/19, Lieutenant Neville Depass did refer to me as "The Note Man" and when corrected by me, continued to use male pronouns referring to me, saying comments "What the fuck has this world come to" and "You can't change the fact that you were born a male".





50. Defendants have allowed me to Attend Women's programming. Also Defendants have allowed me to Attend the library, Gym and yard at the same times as other Female inmate. I have showed Defendants through these activities that housing me on a womens unit would not impair the safe efficient operation of the program, present a safety hazard to the individual inmate or staff, threaten the security of the correctional institution/facility, or would otherwise cause undue hardship in the operation of the institution/facility.

51. During the time I have spent with female inmates at the library, Gym, yard and programming I am treated by other female inmates and acknowledged by the other female inmates as a female. I am consistently ask by the other female inmates as to why I am wearing a red uniform because other female inmates are not given a red uniform. Only male inmates wear red uniforms. I am also consistently asked by other female inmates as to why I am being housed on a male unit.

